

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AVIL E. HOOSEIN,

Plaintiff,

09 Civ. 3925

-against-

OPINION

FEDERAL EXPRESS CORPORATION,

Defendant.

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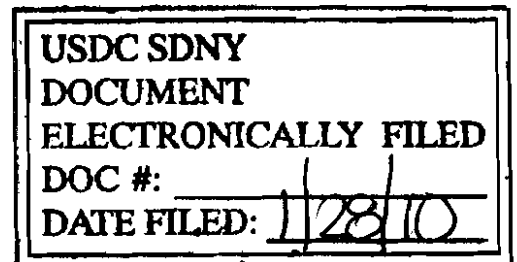
A P P E A R A N C E S:

Pro Se

AVIL HOOSEIN
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Houston, TX 77084

Attorneys for Defendant

FEDERAL EXPRESS CORPORATION
1 Penn Plaza, 26th Floor
New York, NY 10119
By: Colby S. Morgan, Jr., Esq.



Sweet, D.J.

The defendant Federal Express Corporation ("FedEx" or the "Defendant") has moved under Rule 12(b)(1), Fed. R. Civ. P. to dismiss the complaint of plaintiff pro se Avil E. Hoosein ("Hoosein" or the "Plaintiff") alleging discrimination on statute of limitations grounds, the complaint having been filed in the Pro Se Office one day after the 90-day period after Hoosein's receipt of the right-to-sue letter from the Equal Employment Opportunity Commission ("EEOC").


Hoosein has not filed any opposition to the motion nor any equitable consideration upon which to excuse the failure to timely file. As concluded by the Honorable Denny Chin in Toolan v. Bd. of Educ. Of City of New York, Nos. 02 Civ. 6989 (DC) and 03 Civ. 576 (DC), 2003 U.S. Dist. LEXIS 14724, at *4-5, 2003 WL 22015437, at *2 (S.D.N.Y. Aug. 25, 2003) (dismissing claim filed one day late, because there was no basis for application of the doctrine of equitable tolling), the motion to dismiss the complaint is granted.

Hoosein is granted leave to file within 30 days any opposition to the motion and any facts to establish an equitable consideration relating to the time within which to file his complaint. Upon any such filing, FedEx may reply within 10 days, at which time this motion will be reconsidered. Failing such filing, the complaint will be dismissed without further order.

Upon good cause shown, the above periods may be extended.

It is so ordered.

New York, NY
January 27, 2010


ROBERT W. SWEET
U.S.D.J.